

# **MAINE WORKERS' COMPENSATION BOARD COMPLIANCE AUDIT REPORT**

**May 31, 2001**

Maine Workers' Compensation Division  
114 State House Station  
Augusta, ME 04333-0114

**Claims Covered by Audit:** 2000 Dates of Injury

**Companies Covered by Audit:**

State of Maine  
Workers' Compensation Division

NCCI # S369

**Examination by:** Marlene Swift, Auditor

**Reviewed and Approved by:** Steven Minkowsky, D.D.B.A.

The results of the audit and the procedures followed have been explained to:

<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
Earle R. Pease	Director	Various
Anna Reyerson		
Ronald K. Morrill		

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## SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined a sample of 100 claim files for the period under examination (2000) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 100 claim files audited, there were 44 "lost time" claims, 52 "medical only" claims, and 4 "incident only"<sup>1</sup> claims. Of the 44 "lost time" claims audited, 10 were compensable.

The State of Maine is self-insured and the Maine Workers' Compensation Division (WCD) administers its workers' compensation coverage.

Our audit revealed:

- Although the WCD is the designated administrator for the State of Maine's workers' compensation coverage, several other entities are directly responsible for specific aspects of the claims handling process:
  - ◆ Designees (workers' compensation representatives from individual State agencies) are responsible for:
    1. Electronically reporting injuries to the Maine Health Information Center (MHIC). (They send paper copies of the WCB-1, Employer's First Report of Occupational Injury or Disease, to the WCD and to the injured employees.)
    2. Electronically filing WCB-2, Wage Statements and WCB-2A, Schedule of Dependent(s) and Filing Status Statements with the MHIC. (They send paper copies of these forms to the Workers' Compensation Board (WCB), the WCD and the injured employees.)
    3. Keeping track of all injury-related lost time, and reporting it to the MHIC.
    4. Keeping track of all sick leave used for injury-related lost time.
    5. Determining when the 7-day wait and the 14-day wait have been met.
    6. Notifying the MHIC of an obligation to pay indemnity when the 7-day wait has been met.
    7. Calculating partial lost time benefits, and submitting those calculations to the WCD for verification.
    8. Restoring sick leave used for injury-related lost time (when appropriate).
    9. Reporting restored sick leave to the WCD.
  - ◆ The Maine Health Information Center (MHIC) is responsible for:
    1. Maintaining a record of all work-related injuries.

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<sup>1</sup> "Incident only" claims incur no medical expenses and less than a day of lost time.



2. Reporting "lost time" claims and controverted claims to the WCB by Electronic Data Interface (EDI).
3. Reporting return-to-work dates and other corrections of the WCB-1, Employer's First Report of Occupational Injury or Disease form to the WCB by EDI.
4. Notifying the WCD of an obligation to pay or restore sick leave when the 7-day wait has been met.
5. Completing and filing forms (WCB-3, Memorandum of Payment; WCB-4, Discontinuance or Modification of Compensation; WCB-8, Certificate of Discontinuance or Modification of Compensation; WCB-9, Notice of Controversy; WCB-11, Statement of Compensation Paid) with the WCB on behalf of the WCD.
6. Preparing a weekly voucher for indemnity payments to be made to injured employees.
7. Preparing a weekly voucher for claim-related bills to be paid.
8. Electronically filing both vouchers with Financial Services to authorize payments.
9. Preparing paper copies of the vouchers submitted and sending them to the WCD.
10. Calculating interest on awards.
11. Maintaining a comprehensive record of all payments and restorations made on individual claims.

*It is important to note that the MHIC records the date that they "key in" the payments and restorations. Although they are often able to accurately project the expected payment dates, the MHIC's records are not a reliable source for determining the actual dates of payments and/or restorations.*

◆ Financial Services is responsible for:

1. Issuing approved payments for the WCD from their dedicated account.
2. Providing a monthly statement of activity in the WCD account.

- Form filing compliance ranged from 50% to 100%.

See pages  
10 + 11

◆ Total compliance was found in the following form filings:

1. WCB-1, Employer's First Report of Occupational Injury or Disease
2. WCB-3, Memorandum of Payment
3. WCB-4, Discontinuance or Modification of Compensation
4. WCB-9, Notice of Controversy

◆ The lowest compliance was found in the filing of WCB-2A, Schedule of Dependent(s) and Filing Status forms and WCB-2, Wage Statements. Most of the forms that were not filed with the WCB were found in the WCD claim files. Therefore, there may be confusion among some designees as to their obligation to file those forms with the WCB.

- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP), should accurately reflect the date that the initial indemnity payment is sent to the employee (or the date that sick time is restored). The date reported in Box 24 of the MOPs for five of the ten compensable claims audited was incorrect.

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This issue was discussed at the time of the exit conference. The WCD immediately opened discussion of procedural proposals to ensure more accurate data in Box 24 of the MOP.

- 03
- When "restoration" is used to pay benefits, the actual value of the hours restored should be recorded by the MHIC and reported to the WCB. Our audit of WCD records revealed that benefits were sometimes recorded as the amount of benefits due instead of the actual value of the hours restored. Significant differences were found in two of the ten compensable claims audited:

1 ♦ One claim involved an over-reporting of benefits paid (\$47.53). This division found no additional monies were due to the employee for this error.

2 ♦ The other claim involved an under-reporting of benefits paid (\$5.77).

- Injured employees are given the choice of either 1) being compensated by the WCD when they have exceeded their 7-day wait, or 2) using their sick leave to ensure uninterrupted income.

If they choose to use their sick leave, it will be restored (partly) when they have met the waiting periods provided by the Workers' Compensation Act. Restoration of sick leave benefits is calculated as follows:

- Determine the amount of Workers' Compensation benefits payable.
- Determine the employee's hourly rate of pay.
- Divide the Workers' Compensation benefits payable by the employee's hourly rate of pay to determine the number of hours to be restored.

See page 9

- Eleven (92%) of the twelve initial indemnity payments were made timely.

See page 9

- Seventy-three percent of subsequent payments were made timely. One subsequent payment was found to be in violation of §205(3).

See page 9

- The average weekly wage (AWW) was calculated correctly for nine (90%) of the ten compensable claims audited. The earnings for one employee's week of hire were included in the AWW calculations.<sup>3</sup> This resulted in a lower rate and an underpayment of benefits:

- ♦ Upon notice from this division, the WCD promptly made the appropriate corrections and paid the employee the balance due (\$41.00).

See page 9

- In addition to the rate that was wrong because the AWW was wrong, rates for two other claims were incorrectly charted from the Weekly Benefit Table:

4 ♦ One of those incorrect rates resulted in an overpayment of benefits (\$247.40).

5 ♦ The other resulted in an underpayment of benefits (\$48.16). Upon notice from this division, the WCD promptly made the appropriate corrections and paid the employee the balance due.

- 6A  
6B
- At the time of audit it was determined that the seven-day waiting period had not been paid or "restored" for two employees who had lost more than fourteen days. These oversights were promptly corrected upon notice from this division, and the WCD immediately implemented new procedures to prevent this from happening in the future.



- 09 • The value of hours "restored" is sometimes less than the benefit amount due. When this occurs, the balance due must be paid through Financial Services.

Two such claims were identified by audit. The balance due had not been paid on either of those claims at the time of audit:

- 7 ♦ The balance due for one claim was promptly paid upon notice from this division.
- 8 ♦ The other claim involved another error that resulted in an overpayment of benefits (hours for one week of benefits were restored twice). Therefore, no additional benefits were due to that employee.
- One employee's partial benefits were calculated wrong for two of the five weeks where he had partial earnings. This resulted in an underpayment (\$198.20) which was promptly paid upon notice from this division. Because only two of the five weeks of benefits were calculated incorrectly, it appears that this was a simple case of human error.
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- Interest on payments made pursuant to a WCB Hearing Officer's decree was incorrectly calculated. This resulted in an overpayment to the injured employee. The reason for the error was indeterminable because no calculations were found in the WCD file.
- 10
- As previously stated, the WCD receives copies of all form filings, forms used for sick leave restorations, and vouchers prepared to authorize payments. However, their records are incomplete in that they do not have direct access to proof of payments (check numbers and issue dates) or claims notes (such as partial calculations, history of significant events, reasoning used for decisions made, etc.) on a claim-by-claim basis.

Our on-site auditor was advised at the time of audit that the WCD is currently looking for a software package to meet their needs. This would allow them to manipulate data to produce a more complete and comprehensive picture of each claim from start to finish. We are impressed with their initiative.

- Since the time that the WCD was last audited by this agency, they have put much effort into improving the timeliness of payments and form filings. Those efforts are to be commended, as are their continuing efforts to improve their services and address issues identified by this division.

## PENALTIES

### A. Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalty below is being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
HAX Joseph Jordan vs. Bangor Mental Health Institute Date of Injury: 9-22-00 WCD File Number: A0001044 WCB File Number: 13519	Mr. Jordan's seven-day waiting period became compensable on 10-6-00. Payment for the seven-day wait was made 187 days after that date.	\$ 1,500.00
<b>Total Penalties to Injured Employees</b>		<b>\$1,500.00</b>

## PENALTIES

### B. Penalties Allowed by Law (payable to the Workers' Compensation Board)

◆ 39-A M.R.S.A. Sec. 359(2)

"In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act."

◆ 39-A M.R.S.A. Sec. 360(1)(A)

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;"

◆ 39-A M.R.S.A. Sec. 360(1)(B)

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act."

03 Nine (9) forms were filed late (\$900.00).

◆ 39-A M.R.S.A. Sec. 360(2)

"The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.



## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	11	92%
15-28	Days		1	8%
29+	Days		0	0%
Total Due			12	100%

### B. Prompt Subsequent Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	30	73%
8-14	Days		8	20%
15+	Days		3	7%
Total Due			41	100%

### C. Accuracy of Average Weekly Wage

			2000	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	9	90%
Incorrect			1	100%
Total			10	100%

### D. Accuracy of Weekly Benefit Rate

			2000	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	7	70%
Incorrect			3	30%
Total			10	100%

## FORM FILING

### A. First Report (WCB-1)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	45	100%
Not Filed		0	0%
Total		45	100%

### B. Wage Statement (WCB-2)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	70%
Not Filed		3	30%
Total		10	100%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	5	50%
Not Filed		5	50%
Total		10	100%

### D. Memorandum of Payment (WCB-3)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	10	100%
Not Filed		0	0%
Total		10	100%

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## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	100%
Not Filed		0	0%
Total		7	100%

### F. Notice of Controversy (WCB-9)

*Two "medical only" NOCs were filed in addition to the following:*

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	8	100%
Filed Late		0	0%
Total		8	100%

### G. Statement of Compensation Paid (WCB-11)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	5	83%
Not Filed		1	17%
Total		6	100%